

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1136.

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DONALD McPHERSON, APPELLANT,

vs.

HENRY B. F. MACFARLAND, JOHN W. ROSS, AND JOHN
BIDDLE, COMMISSIONERS OF THE DISTRICT OF
COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 31, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1136.

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In the Court of Appeals of the District of Columbia.

DONALD MCPHERSON, Appellant,
vs.
HENRY B. F. MACFARLAND ET AL., Comm'rs, D. C. } No. 1136.

a Supreme Court of the District of Columbia.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No.
577, District Court.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed Jul- 12, 1900.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No.
577, District Court.

The petition of Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach respectfully shows:

1. That they are the Commissioners of the District of Columbia, and by the provisions of the act of Congress approved June 6, 1900, entitled "An act authorizing and requiring the Metropolitan Railroad Company to extend its lines on old Sixteenth street," they were directed to institute by petition a proceeding in this court to condemn the land necessary for the widening of Columbia road to a width of one hundred feet, and the present Sixteenth street to a width of eighty-five feet from Columbia road to Park street.

2. That a map of the proposed extension or widening of Columbia road and Sixteenth street, showing the number and designation of the parcels of land affected thereby, the names of the owners thereof, and area of the land to be condemned for such widening, has been prepared and a copy thereof is hereto annexed, marked "Exhibit D. C. No. 1," and made a part of this petition.

3. That in and by said act of Congress it is provided, among

other things, as by reference thereto will appear, "That of the amount found to be due and awarded as damages for and in respect of the land condemned for the extension of Columbia road and present Sixteenth street, as herein provided, such proportional amount thereof as the jury shall determine shall be assessed as benefits, and to the extent of such benefits, against respectively the Metropolitan Railroad Company, and against those pieces or parcels of land on each side of said Columbia road and the present Sixteenth street northwest, along those portions of said streets that are to be widened, and also on any or all pieces or parcels of land which will be benefitted by the extension of said Columbia road and the present Sixteenth street northwest, as said jury may find said pieces or parcels of land will be benefitted; and in determining the amounts to be assessed against said pieces or parcels of land the jury shall take into consideration the respective situations of such pieces or parcels of land and the benefits they may severally receive from the extension of Columbia road as aforesaid."

Wherefore your petitioners pray :

3 3. That a jury of seven judicious, disinterested men may be summoned by the marshal of the District of Columbia to condemn the land necessary for the extension of said Columbia road, and to assess the benefits resulting therefrom, as required by said act of Congress.

4. That the land hereinbefore described, necessary for the widening of Columbia road and old Sixteenth street, may be condemned by the order and decree of this court.

5. And for such other and further relief as the nature of the circumstances of the case require and to this court shall seem proper.

HENRY B. F. MACFARLAND,
JOHN W. ROSS,
LANSING H. BEACH,
Commissioners of the District of Columbia.

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Petitioners.

DISTRICT OF COLUMBIA, ss :

Henry B. F. Macfarland and Lansing H. Beach upon oath say that they and John W. Ross are the Commissioners of the District of Columbia, and that they have read the foregoing petition by them subscribed as such Commissioners and know the contents thereof, and that the facts therein stated upon their personal knowledge are true, and those stated upon information and belief they believe to be true.

HENRY B. F. MACFARLAND.
LANSING H. BEACH.

Subscribed and sworn to before me this eleventh day of July, 1900.

[SEAL.]

WILLIAM TYNDALL,
Notary Public, D. C.

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Order for Jury.

Filed Aug. 1, 1900.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577, Dist. Court.

It appearing to the court that the public notice by advertisement, heretofore ordered in this cause to be given, has been duly published as therein provided, and that the United States marshal for the District of Columbia has caused a copy of said notice to be served upon such owners of the land to be condemned as could be found within the District of Columbia: Now, on consideration of the petition of the Commissioners of the District of Columbia filed herein, it is, this 1st day of August, A. D. 1900, on motion of counsel for said Commissioners—

Ordered that the United States marshal for the District of Columbia summon a jury of seven judicious, disinterested men, not related to any person interested in the proceedings and not in the service or employment of the District of Columbia or of the United States, to be and appear in this court on Thursday, the 2d day of August, A. D. 1900, at 10 o'clock a. m., to assess the damages each owner of land taken herein may sustain by reason of the widening of Columbia road to a width of one hundred feet and the present Sixteenth street to a width of eighty-five feet from Columbia road to Park street, and the condemnation of lands for the purposes of

5 such widening, as set forth in the said petition and the plat filed therewith, and to assess the benefits resulting therefrom as provided in the act of Congress approved June 6, 1900; entitled "An act authorizing and requiring the Metropolitan Railroad Company to extend its lines on old Sixteenth street."

By the court:

JOB BARNARD, *Justice.*

Marshal's Return.

Aug. 1, 1900.

Pursuant to the within order, the following-named jurors were summoned to appear at the time stated in said order:

1. Robert I. Fleming.
2. Thomas W. Smith.
3. John A. Hamilton.
4. Edward Graves.
5. James F. Oyster.

6. W. A. H. Church.

7. Henry O. Towles.

AULICK PALMER,
U. S. Marshal.

R.

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Verdict.

Filed Sept. 27, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Sitting as a
District Court.

In re THE WIDENING OF COLUMBIA ROAD AND THE PRESENT SIXTEEN-
STREET NORTHWEST. No. 577, District Court.

We, the jury in the above-entitled cause, hereby find the following verdict and award of damages for and in respect of the land condemned and taken for the widening of Columbia road to a width of one hundred feet and the present Sixteenth street to a width of eighty-five feet from Columbia road to Park street, etc., as shown on a plat or map filed with the petition in this cause, amounting to the sum of one hundred and eighty-one thousand and eight hundred and fifty-eight dollars (\$181,858.00), as set forth in Schedule 1, hereto annexed as part hereof.

And we, the jury aforesaid, in accordance with the act of Congress approved June 6, 1900, for the widening of Columbia road and the present Sixteenth street, do hereby find the amount of benefits resulting therefrom to be the sum of ninety thousand and nine hundred and twenty-nine dollars (\$90,929.00) and twenty-five thousand dollars (\$25,000.00).

And we, the jury aforesaid, find that the Metropolitan Railroad Company (called in said act the Metropolitan Street Railroad Company) will be benefited by the aforesaid widening of Columbia road and the present Sixteenth street, and that the pieces and parcels of land that will be benefited by the aforesaid widening of

7 Columbia road and the present Sixteenth street are the pieces and parcels of land on each side of said Columbia road and the present Sixteenth street where said streets are to be widened, and the other pieces and parcels of land mentioned and described in Schedule 2, hereto annexed as part hereof; and we find that the Metropolitan Railroad Company and the several pieces and parcels of land in said Schedule 2 will be benefited, as aforesaid, to the extent of the respective amounts mentioned and set forth in said Schedule 2, and we assess against the Metropolitan Railroad Company and the pieces and parcels of land respectively as and for benefits, as aforesaid, the several amounts mentioned, specified, and set forth in said Schedule 2.

Witness our hands and seals this 25th day of September, A. D. 1900.

ROBT I. FLEMING.
EDWARD GRAVES.
JAS. F. OYSTER.
HENRY O. TOWLES.
THOS. W. SMITH.
JOHN A. HAMILTON.
W. A. H. CHURCH.

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SCHEDULE No. 2.

Denison and Leighton's Subdivision.

| Lot. | Square feet of area facing Kenesaw Ave. | Assessments. | Owners. |
|-----------|---|---------------|------------------------|
| 74.....* | * 7,867.0 | * \$236.00 | * Donald McPherson. |
| 76.* | * 7,867.0 | * \$236.00 | * Donald McPherson. |
| 78.....* | * 7,867.0 | * \$236.00 | * Mark F. Finley. |
| 80.....* | * 7,867.0 | * \$157.00 | * Mark F. Finley. |

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Exceptions of Donald McPherson.

Filed Oct. 27, 1900. J. R. Young.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re THE WIDENING OF COLUMBIA ROAD AND PRESENT SIXTEENTH STREET N. W. No. 577, District Court.

Now comes the respondent, Donald McPherson, in his own proper person, and says that he is the owner of lots numbered seventy-four (74), seventy-six (76), seventy-eight (78), and eighty (80), in the subdivision of land in said District known as that of Denison and Leighton, and objects and excepts to the confirmation of the verdict of the jury in the above-entitled cause in respect to the assessment of presumed or alleged benefits as a result of said proceedings, or for any cause, for the general reasons, viz., that said assessments are unreasonable, unjust, and unconstitutional, and are in violation of the Constitution of the United States, providing that private property shall not be taken without just compensation and due process of law.

3rd. That the provisions of the said act authorizing the assessments of benefits as set forth in section 4 are illegal and unconstitutional, in that it authorizes and requires the jury to levy on all lots that may be presumed or pretended to be

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benefited an assessment in a degree or to an extent in excess of special benefits, which is clearly illegal and in disregard of the decisions of the courts.

4th. The action of the jury in the assessment of presumed benefits on lots on Kenesaw avenue, viz, the lots of the respondent, is clearly unreasonable, unjust, and illegal, inasmuch as the most remote lot, distant some 450 feet from the said Sixteenth street, is assessed to the same extent and degree as the adjacent and near lot or lots, viz., the sum of \$236.00 on each of this respondent's four (4) lots, which is in violation of the rule or principal of law that taxation for the same or similar purposes shall be equal and uniform and in proportion to benefits, for it cannot be presumed that benefits in an equal degree to all lots of unequal distance, however remote, should accrue and then to cease entirely.

Said verdict and assessment are, among other things, unreasonable and unjust, for the reasons that no benefits whatever did or could *occur* from the said proposed or pretended widening of Sixteenth street, for, as a matter of fact, no actual widening would occur from the provisions of said act or the proceedings to be taken thereunder.

For the reasons that said 16th street is and was a dedicated and improved street of the full width of seventy-four (74) feet from the north line of the Swaim tract to Park street, and for the same extent a building line had by the abutting property-owners been duly established and recorded, making the said street between
11 building lines the full width of eighty-five (85) feet.

Said verdict and assessments are unjust and unreasonable from the following conditions, viz., that the strip or strips of land of the total width of eleven (11) feet to be taken to establish said building line within the limits named, and being the same land proposed to be taken under these proceedings, would aggregate about 13,059 sq. feet, and for which the jury in this case awarded the sum of about \$10,270.00, while the said jury assessed as benefits on the area of land lying on each side and adjacent thereto and distant, varying from about 200 feet to over 450 feet, the sum of about \$22,200.00, which is in excess of the cost of the land to be taken of over 200 %.

That said Sixteenth street is not and was not intended to be one of the main thoroughfares of the District, but an intermediate street between Sixteenth street and Seventeenth street, two of the great thoroughfares of the District, to be 150 and 90 feet in width respectively, as required by law and the plan of street extension, and *which* for the extension of the former street a suit is now pending in this court (No. 580), filed August 21st, 1900, instituted under the authority of an act of Congress, with authority to assess at least 50 % of the expense or cost of this vast and expensive thoroughfare, with all improvements thereon, upon the abutting and adjacent lots, for the distance of 250 feet and beyond, at the discretion of the jury, which will operate as a double assessment to a considerable extent on the lots of the respondent and other contiguous lots, and will result in

great hardship, if not confiscation of the property of the respondent.

12 That said Sixteenth street as now conditioned is of ample width, either for the benefit or desires of the abutting or adjacent lot-owners, and in fact the proposed change, by the condemnation of the strip between building lines, would be of no benefit whatever, if not a positive detriment, except to the railway company, for whose sole benefit these proceedings were authorized.

That injustice was done the respondent by the refusal of the jury to receive material and proper testimony and evidence offered in behalf of respondent by his counsel.

The verdict of the jury respecting said assessments is contrary to the evidence in the case, and also contrary to the law and rulings of the court and contrary to the instructions of this court to the jury.

Wherefore your petitioner prays the court—

That said verdict respecting the said assessments may be set aside and held as illegal and void, and give such other relief as the rights of this petitioner may require in the premises.

DONALD McPHERSON,
*Owner of Lots 74, 76, 78, and 80, in
Denison and Leighton's Subdivision.*

DONALD McPHERSON,
In Proper Person.

DISTRICT OF COLUMBIA, ss :

I do solemnly swear that I have read the foregoing objections and exceptions, which are signed by me, and know the contents thereof, and that the matters and things therein set forth of my own knowledge are true, and those set forth upon information and belief I believe to be true.

DONALD McPHERSON.

Subscribed and sworn to before me this 26th day of October, 1900.

[SEAL.]

CHAS. H. BAUMAN,
Notary Public, D. of C.

13 *Decree Confirming Verdict, &c.*

Filed Jul- 9, 1901. J. R. Young.

In the Supreme Court of the District of Columbia.

In re WIDENING OF COLUMBIA ROAD AND OLD SIXTEENTH STREET.
No. 577, District Court.

It appearing to the court that the order *nisi* confirming the verdict, award, and assessment of the jury filed herein has been duly published as therein provided, and that the Metropolitan Railroad Company and the owners of land condemned and the owners of land assessed in said verdict have been duly notified of the pendency of

these proceedings, as provided in said order, and it appearing to the court that by a clerical error in said verdict an assessment appears to have been made against lot eighteen (18), in block fourteen (14), of Meridian Hill subdivision, owned by George T. Dearing, in the sum of one hundred and fifty dollars (\$150.00), whereas said assessment was in fact one hundred dollars (\$100.00), and should have so appeared, it is, this 9th day of July, 1901, by the court adjudged, ordered, and decreed that the said verdict, award, and assessment be, and the same hereby is, amended accordingly, so as to show an assessment against said land in the sum of one hundred dollars (\$100.00), and argument of counsel upon the exceptions to said verdict filed herein having been heard and considered, it is by this court, this 9th day of July, 1901, further adjudged, ordered, and decreed, upon the motion of the Commissioners of the District of Columbia, that the said exceptions and each of them be, and they are hereby, overruled and the aforesaid verdict, award, and
 14 assessment, as amended as aforesaid, be, and the same hereby is, in all respects finally confirmed.

A. B. HAGNER, *Justice.*

And from so much of the above decree as overrules its exceptions and confirms the verdict, award, and assessment against it the Metropolitan Railroad Company appeals in open court, and the penalty of the appeal bond is fixed by the court at one hundred dollars.

A. B. HAGNER,
Asso. Justice.

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Order for Appeal and Citation.

Filed Jul- 30, 1901.

In the Supreme Court of the District of Columbia, the 30th Day of July, 1901.

In re WIDENING OF COLUMBIA ROAD AND PRESENT SIXTEENTH STREET N. W. 577, District Court.

The clerk of said court will please note the appeal of Donald McPherson to the Court of Appeals from so much of the decree in this cause passed July 9th, 1901, which overrules the exceptions of said Donald McPherson and confirms the verdict and award of the jury as to him and his land.

And the clerk will please issue citation to the Commissioners of the District of Columbia accordingly.

DONALD MCPHERSON,
Attorney for in Proper Person.

16 Filed Jul- 30, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET.
No. 577, Dist. Court.

The President of the United States to Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 30th day of July, 1901, wherein Donald McPherson is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 30th day of July, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 30 day of July, 1901.

ARTHUR H. O'CONNOR,
Attorney for Appellee.

17 *Order of Severance.*

Filed Jul- 30, 1901.

In the Supreme Court of the District of Columbia, the 30th Day of July, 1901.

In the Matter of the WIDENING OF COLUMBIA ROAD AND THE PRESENT SIXTEENTH STREET NORTHWEST. District Court, No. 577.

Upon motion of Harriet L. Vining and Donald McPherson, by their attorney, Chapin Brown, it is ordered that a severance be granted them, and that they be granted the privilege of prosecuting their several appeals separately from the other respondents in the above-entitled cause.

A. C. BRADLEY, *Justice*.

Memorandum.

July 30, 1901.—Appeal bond of Donald McPherson filed.

18 *Order Extending Time for Filing Transcript.*

Filed Aug. 30, 1901.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. District, No. 577.

It is hereby ordered this 30th day of August, 1901, that the time for filing transcript of record upon the appeals of John M. Clapp, Anna M. Heinz, Harriet L. Vining, and Donald McPherson, in the above-entitled cause be, and it is hereby, extended until the 1st day of October, 1901.

By the court :

JOB BARNARD, *Justice.*

19 *Order Extending Time for Filing Transcript.*

Filed Sept. 28, 1901.

In the Supreme Court of the District of Columbia, Holding a United States District Court.

In re WIDENING OF COLUMBIA ROAD AND PRESENT SIXTEENTH STREET. No. 577.

On motion of E. H. Thomas for John M. Clapp, Harriet L. Vining, and Donald McPherson and Anna M. Heinz, it is by the court, this 28th day of September, 1901, ordered that the time for perfecting the record of said John M. Clapp, Harriet L. Vining, Donald McPherson, and Anna M. Heinz on their appeals in the cause be, and the same is extended hereby, to and including the first day of November, 1901.

T. H. ANDERSON, *Justice.*

20 *Stipulation as to Transcript.*

Filed Oct. 25, 1901.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

In re WIDENING OF COLUMBIA ROAD AND PRESENT SIXTEENTH STREET. No. 577.

Stipulation.

It is hereby stipulated by and between the parties to the appeal of Donald McPherson against the decree of the court of July 9th, 1901, confirming the verdict, award, and assessment of benefits

against Donald McPherson, that the following designated portions of the record shall constitute the transcript of record for the purposes of the appeal of the said Donald McPherson in said cause:

1st. Petition of the Commissioners, filed July 12th, 1900, omitting therefrom prayers 1 and 2.

2nd. Order appointing jury, passed August 1st, 1900.

3rd. Verdict of jury, omitting Schedules 1 and 2, excepting assessment against McPherson lots, viz., lots 74, 76, 78, and 80, Denison and Leighton's subdivision.

4th. Exceptions of Donald McPherson to the verdict, award, and assessment of the jury, except exception numbered 2.

5th. Decree of the court confirming the verdict, award, and assessments.

6th. Appeal of Donald McPherson and order of severance of Donald McPherson, with order extending of time, &c., for filing transcript.

It is hereby further stipulated that the blue-print copies of the verdict, award, and assessments, with the map, now filed with
21 the clerk, may be considered and made a part of the record of appeal, and that the same need not be printed, but may be referred to by either party in the argument of the case in the Court of Appeals, and be considered a part of the record therein.

It is further stipulated that counsel for either party, appellant or appellee, may, upon the hearing of the cause upon appeal, produce and read any other part of the record in the supreme court of the District of Columbia in the case, and may, if necessary, make the same a part of the record on appeal, although the same be not in the printed record.

CHAPIN BROWN,
Attorney for Donald McPherson.
A. B. DUVALL, *Att'y for D. C.,*
By ARTHUR H. O'CONNOR,
Ass't Att'y.

22 UNITED STATES OF AMERICA, } ss :
District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 21, inclusive, to be a true and correct transcript of the record, as per stipulation of counsel herein filed, copy of which is made part of this record, in cause No. 577, District court, *In re* Widening of Columbia Road and Sixteenth Street, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, this 30 day of Octo-
Columbia. ber, A. D. 1901.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No.
1136. Donald McPherson, appellant, *vs.* Henry B. F. Macfarland
et al., Comm'rs D. C. Court of Appeals, District of Columbia.
Filed Oct. 31, 1901. Robert Willett, clerk.

